IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

WRIT PETITION NO.1208 OF 2006

Mumbai Metropolitan Region Development Authority, Mumbai. Petitioner

vs.

Asst.Director of Income-tax (Exemptions), Circle I(1), Mumbai & ors. Respondents

Mr.J.D.Mistry with Mr.A.K.Jasani i/b.Mr.A.K.Jasani for the petitioner.

Mrs.N.V.Masurkar i/b.Dr.T.C.Kaushik for the respondents.

CORAM : R. M. LODHA &
J. P. DEVADHAR,JJ.

DATED : 26th April, 2006

P.C.

Mumbai Metropolitan Region Development Authority (for short, 'MMRDA') has filed the present writ petition in challenging the assessment order dated 28th March, 2006 passed by the Assistant Director of Income-tax (Exemptions) under Section 143(3) of the Income Tax Act, 1961.

2. That the impugned order is appealable under Section 246A of the Income Tax Act, 1961 is not in dispute. However, the contention of the counsel for the petitioner is that the Assessing Officer had no jurisdiction to embark upon the enquiry of exemption under Section 11 of the Income Tax Act, 1961 as the certificate granted under Section 12AA of the Income Tax Act, 1961 still holds the field and has not been

reinvoked and, therefore, the assessment order is ex-facie bad in law. In support of his contention, the counsel relied upon the following judgments: Madhya Pradesh Madhyam v. Commissioner of Income-tax and anr., **(2002) 256 ITR 277;** National Leather Cloth Manufacturing Co. v. Indian Council of Agricultural Research & ors., **(2000) 241 ITR 482;** the order passed by us on **14th March, 2006 in Writ petition No.531/2006**-M/s.Uma Corporation vs.Krishna Prabhakar; Commissioner of Income-tax v. Bhaichand Amoluk Consultancy Pvt.Ltd., **(1994) 208 ITR 1** and Commissioner of Income-tax v. Chotatingrai Tea & ors., **(2002) 258 ITR 529.**

3. The counsel took us through the Mumbai Metropolitan Region Development Authority Act, 1974 to canvass that MMRDA is an institution which is set up for the object of general public utility. He would submit that MMRDA is engaged in certain infrastructural projects of general public importance. Though MMRDA is a statutory body set up under the Act of the State Legislature, the counsel argued that its object being general public utility and it being engaged in the projects of general public importance is an institution for charitable purpose within the meaning of Income Tax Act, 1961. He relied upon the judgment of the Supreme Court in the case of Commissioner of Income-tax, Andhra Pradesh v. Andhra Pradesh State Road Transport Corporation; **(1986)**

159 ITR 1.

4. The counsel also relied upon the letter written by the Finance Minister to the Chief Minister of Uttar Pradesh (Exhibit "G") wherein the then Finance Minister in response to the letter dated 11th July, 2002 sent by the Chief Minister of Uttar Pradesh regarding exemption of Housing Boards and Development Authorities from Income-tax responded that if Housing Boards and Development Authorities are working for advancement of an object of general public utility, and without profit-motive, they can still claim exemption from income-tax as charitable institutions after fulfilling conditions prescribed under Section 11 of the Income-tax Act. He also referred to Board Circular and relied upon the judgment of the Supreme Court in the case of Gestetner Duplicators Pvt.Ltd. v. Commissioner of Income-tax, West Bengal, **(1979) 117 ITR 1.**

5. The counsel would submit that show cause notice was received by the petitioner from the Director of Income Tax (Exemptions) for revocation of the certificate granted under Section 12AA of the Income Tax Act. The challenge to the said show cause notice came up before this Court at the instance of the present petitioner in Writ Petition No.599/2006. On 7th March, 2006, the writ petition was disposed of as withdrawn by observing that in the event of the Director of Income Tax (Exemptions)

passing an order adverse to the petitioner cancelling registration granted under Section 12AA(i) of the Income Tax Act, 1961, such order shall not come into operation for a period of four weeks from the date of the receipt of the order by the petitioner. Relying upon the said order, the counsel would submit that there was no justification for the Assessing Officer to go into the aspects regarding the status of MMRDA as a Trust and that the activities of the MMRDA are not of charitable nature.

6. We do not intend to deal with the diverse contentions raised on behalf of the petitioner on merits, as in our view, the impugned order is appealable under Section 246A of the Income Tax Act, 1961. The Income Tax Act, 1961 is a self-contained code and provides a remedial machinery to an aggrieved assessee from the assessment order. The remedy of appeal is efficient. The order passed by the Assessing Officer may be right or wrong, but that would not justify invocation of extraordinary jurisdiction under Article 226 of the Constitution of India and bypassing the statutory remedy of appeal unless such order suffers from patent lack of jurisdiction. We are clear in our mind that impugned order does not suffer from patent lack of jurisdiction.

7. The counsel then submitted that the petitioner may

be permitted to file an appeal against the impugned order and direction be issued that until disposal of appeal, the demand shall not be recovered. He invited our attention to the order passed by us on 31st March, 2006 in Writ Petition No.880/2006, ICICI Securities Limited v. The Assistant Commissioner of Income Tax & ors.

8. It is always open to the petitioner to challenge the impugned order in appeal under Section 246A of the Income Tax Act, 1961. Our permission is not required for that purpose because the petitioner has statutory right of appeal. As regards stay of the recovery of demand, the petitioner has to apply to the Appellate Authority. We find no impediment for the appellant in making an application for stay before the Appellate Authority. The fact situation in the present case and in the case of ICICI Securities Limited is different. That was a case where the challenge was to notice for reopening the assessment and the reassessment order passed pursuant to that notice. In the present case, the order impugned is regular assessment order. It is true that by the impugned order the petitioner has been assessed under Section 143(3) on a total income of Rs.521,05,79,475/- and tax levied is Rs.164,13,05,235/- and interest under Section 234-B is Rs.61,13,86,200/- and, therefore, stakes are high, but that would not justify invocation of extraordinary jurisdiction or

passing the order of stay. If the course suggested by the counsel is permitted, the day would not be far where the assessees aggrieved by the orders of regular assessment shall first approach the High Court under Article 226 of the Constitution of India before filing the statutory appeal and get an order of stay until disposal of the appeal. We are afraid, such course instead of doing any justice would be travesty of justice. When a Statute provides remedy of appeal against an order adverse to a party, such statutory provision must be permitted to have its course. We do not find the present case an extraordinary one justifying by-pass to the statutory remedy of appeal.

9. The writ petition is dismissed in limine.

(R.M. LODHA,J.)

(J.P. DEVADHAR,J.)